

REMARKS

Claims 1-3, 6, 8, 11, 13, 20, 22, 23, 26, 27, 30, 31, 36, 37, 45, and 48-53 remain in the application. Reconsideration of the application in view of the amendments and the remarks is requested.

Claims 1, 2, 23, 26, 27, 30, 31, 36, 37, 45, and 48-53 are allowed.

Claims 3, 6, 8, 11, 13, 20, and 22 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6, 8, 11, 12, 18 and 20 of U.S. Patent Application Serial No. 10/004,172 and in view of WO 98/12738. However, this is an inappropriate double patenting rejection as Serial No. 10/004,172 is a divisional application of the present application, Serial No. 09/148,723, wherein Serial No. 10/004,172 was divided out from the present application (Serial No. 09/148,723) because of a restriction requirement of the Patent Office in the present application.

The Examiner is respectfully reminded, pursuant to 35 USC §121, "[a] patent issuing on an application with respect to which a requirement for restriction under this section has been made, or on an application filed as a result of such a requirement, shall not be used as a reference [] in the Patent and Trademark Office...." *see also*, MPEP §804.01 (8th Ed.). The present application is the parent application of divisional Application Serial No. 10/004,172 wherein the present application was presented with a restriction requirement by the Patent and Trademark Office at paper no. 5, and divisional Application Serial No. 10/004,172 is a result of that restriction. Accordingly, pursuant to the above

authority, U.S. Patent Application Serial No. 10/004,172 can not be used as a reference for the obviousness-type double patenting rejection against the present application. Therefore, the obviousness-type double patenting rejection is inappropriate and should be withdrawn.

Since no other rejections are presented against claims 3, 6, 8, 11, 13, 20, and 22, the claims are allowable.


Further, Applicant herewith submits a duplicate copy of the Information Disclosure Statement and Form PTO-1449 filed together in this application on June 18, 2003. No initialed copy of the PTO-1449 has been received back from the Examiner. To the extent that the submitted references listed on the Form PTO-1449 have not already been considered, and the Form PTO-1449 has not been initialed with a copy being returned to Applicant, such examination and initialing is requested at this time, as well as return of a copy of the initialed Form PTO-1449 to the undersigned.

This application is now believed to be in immediate condition for allowance, and action to that end is respectfully requested. If the Examiner's next anticipated action is to be anything other than a Notice of Allowance, the undersigned respectfully requests a telephone interview prior to issuance of any

such subsequent action.

Respectfully submitted,

Dated: 9-18-03

By: 
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